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Decision

Matter of: Urban-Meridian Joint Venture

File: B-287168; B-287168.2

Date: May 7, 2001

Michael A. Gordon, Esq., Holmes, Schwartz & Gordon, for the protester.
Benjamin N. Thompson, Esq., and Jennifer M. Miller, Esq., Wyrick Robbins Yates & Ponton, for B&W Contract Services, Inc., an intervenor.
Thomas Y. Hawkins, Esq., GSA-Public Buildings Service, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In evaluating experience and past performance of joint venture under Small Business Administration mentor-protégé program, agency properly considered that small business protégé, which would be performing a majority of the work under the contract, had no relevant experience.
 2. Agency's evaluation of protester's proposal as unacceptable under staffing and approach factor was unobjectionable where agency reasonably determined that protester did not propose sufficient staffing, and that the proposed on-site supervisor did not have all experience required by the solicitation.
 3. In evaluating experience and past performance, agency reasonably credited awardee, a new business entity, with the experience of employees who worked on identical contract for predecessor firm.
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DECISION

Urban-Meridian Joint Venture protests the award of a contract to B&W Contract Services, Inc. (BWCS) under request for proposals (RFP) No. GS-09P-00-KSC, issued by the General Services Administration (GSA) for operation, maintenance and repair services at the United States Court of Appeals in San Francisco, California. Urban-Meridian principally challenges the evaluation of proposals.

We deny the protest.

The solicitation provided for an evaluation based on experience/past performance, staffing/approach, and price; the non-price factors were more important than price. Eight offerors responded to the solicitation, including Urban-Meridian and BWCS. Based on the technical evaluation, Urban-Meridian's proposal was ranked fourth and BWCS's first. Urban-Meridian's price was low and BWCS's seventh low. The source selection authority found that BWCS's significantly superior technical proposal was worth its additional cost, and that it therefore represented the best value. Accordingly, award was made to BWCS.

Urban-Meridian challenges the evaluation of its and the awardee's proposals under both the experience/past performance and staffing/approach factors on a number of bases. In reviewing a protest against a procuring agency's proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. National Toxicology Labs., Inc., B-281074.2, Jan. 11, 1999, 99-1 CPD ¶ 5 at 3. Based on our review of the record, we find that the evaluation under these factors was reasonable. We discuss Urban-Meridian's principle arguments below.

EXPERIENCE/PAST PERFORMANCE

Urban-Meridian's Proposal

Urban-Meridian is a joint venture formed under the Small Business Administration's (SBA) mentor-protégé program.¹ See 13 C.F.R. § 124.520 (2000). It is comprised of Urban Systems, Inc., a small disadvantaged business, and Meridian Management Corporation, a large business. Under the firms' joint venture agreement, while Meridian, as the mentor firm, would be involved in performing the contract and would assist Urban, the protégé firm, in gaining the experience and training necessary to compete for federal contracts, Urban would be responsible for performing the majority of the work under the contract, and would be significantly involved in managing the contract. Mentor Protégé Agreement; Joint Venture Agreement; Protest at 4.

Urban-Meridian's proposal received an experience/past performance rating of 5 (out of 10 available) points. In reaching this rating, GSA considered that Urban, the entity that would actually be responsible for performing the day-to-day work at the courthouse, had no directly related experience; Urban's only experience was performing two parking garage management contracts. Evaluation Memorandum at 5. GSA also considered Meridian's experience and past performance. GSA found that Meridian had some, though not extensive, experience working with all required

¹ While the protester refers to a GSA mentor-protégé program, it cites no regulations establishing or governing the program, and GSA has advised us that no such program exists. We therefore assume that the protester intended to refer to the SBA program.

systems, and some experience performing at courthouses. Id. GSA also considered the fact that Meridian's past performance ratings were satisfactory, but not outstanding. Agency Report (AR) at 7.

Urban-Meridian argues that GSA's downgrading of its proposal based on Urban's lack of relevant experience effectively improperly nullified Urban's participation in the mentor-protégé program, and also disregarded its plan to hire the incumbent employees to perform the contract. According to Urban, it is likely that the incumbent employees would accept employment with Urban, and that the day-to-day work thus would continue to be performed by experienced personnel. Urban asserts that the only other experience that will be required is corporate management of the incumbent personnel which, Urban insists, Meridian can supply.

This aspect of the evaluation was reasonable. Where an agency is evaluating the experience and past performance of a joint venture, there is nothing improper in its considering the specific experience and past performance of the entity that would actually perform the work. See Global Eng'g & Constr. Joint Venture, B-275999.4, B-275999.5, Oct. 6, 1997, 97-2 CPD ¶ 125 at 8. The SBA regulations governing the mentor-protégé program do not provide otherwise, see 13 C.F.R. § 124.520, and we find no other basis for precluding the agency from fully considering the experience and past performance of both firms in such an arrangement. As for Urban-Meridian's intention to hire the incumbent employees, the firm's proposal did not include any information demonstrating that these employees would accept employment with Urban-Meridian. For example, Urban-Meridian did not submit letters of interest or intent from the employees, and did not provide an explanation of how it planned to recruit them; indeed, Urban did not even indicate that it had contacted the employees. Under these circumstances, GSA's failure to credit Urban with the experience of these potential employees was not unreasonable. See generally Comprehensive Health Servs., Inc., B-285048.3 et al., Jan. 22, 2001, 2001 CPD ¶ 9.

BWCS's Proposal

The incumbent contractor for these services is B&W Service Joint Venture, an entity comprised of Walker Services Corporation and LB&B Associates, Inc. BWCS was formed by Walker and LB&B to bid on this follow-on contract. In evaluating BWCS's proposal under the experience/past performance factor, the agency recognized that the company was new and had no experience in its own name. However, the agency also recognized that the staff BWCS proposed was the same staff that is currently performing the contract for the joint venture, and therefore considered the incumbent staff's experience and past performance in evaluating BWCS under this factor. Supplemental Agency Report at 2. Urban-Meridian complains that this was

improper because the solicitation required an evaluation of the offeror, not the offeror's employees.²

A procuring agency properly may evaluate the corporate experience of a new business entity by considering the experience of a predecessor firm, including experience gained by employees while working for the predecessor firm. The key consideration is whether the experience evaluated reasonably can be considered predictive of the current offeror's performance under the contract. Oklahoma County Newspapers, Inc., B-270849, B-270849.2, May 6, 1996, 96-1 CPD ¶ 213 at 4. Here, since the four on-site employees proposed by BWCS worked for the predecessor firm in the same capacities they will fill under the new contract, we think it was reasonable for the agency to consider the employees' experience and past performance predictive of BWCS's performance if it received award. It follows that the agency reasonably considered the employees' experience in evaluating BWCS's proposal.

Urban-Meridian asserts that BWCS misrepresented that LB&B would have a role in the performance of this contract by stating in its proposal that, "Along with Mr. Dugan's experience, B&W Contract Services, Inc. and LB&B Associates, Inc., we bring a wealth of experience to the U.S. Court of Appeals in San Francisco." BWCS Proposal at ES-1. According to Urban-Meridian, GSA relied on this representation in assigning BWCS's proposal a score of 10 (out of 10 available) points for experience and past performance.

This argument is without merit. First, Urban-Meridian has taken the sentence in BWCS's proposal regarding LB&B out of context. The quoted statement is followed by:

Even though we have addressed LB&B Associates Inc.'s experience, B&W Contract Services, Inc. is not dependent upon LB&B Associates, Inc. for experience or references. B&W Contract Services, Inc., along with the majority shareholder has the necessary experience and financial credentials to perform continuing, high quality services under the resultant contract.

² Urban-Meridian raises several arguments based on its belief that the agency violated the source selection plan; for example, it asserts that GSA should have downgraded BWCS under the experience/past performance factor for failing to provide the minimum three references called for under the source selection plan. However, alleged violations of a source selection plan do not provide a valid basis for protest. See ENMAX Corp., B-281965, May 12, 1999, 99-1 CPD ¶ 102 at 5.

BWCS Proposal at ES-1. It was sufficiently clear from this statement, we think, that BWCS was not representing that LB&B would be significantly involved in performing the contract, and there was no other statement or indication in BWCS's proposal to the contrary. Further, while one of the evaluators indicated that he would have liked to see more than one past performance reference for LB&B, the consensus evaluation report makes no mention of LB&B. Rather, the discussion of BWCS's experience and past performance centers solely on its extensive experience--through its employees, not LB&B--using all critical electronic systems, and operating and maintaining the mechanical, electrical and plumbing systems, and the courthouse generally, for the past 5 years as the incumbent contractor. Evaluation Memorandum at 4. We conclude that the evaluation in this area was reasonable.

STAFFING/APPROACH

GSA found Urban-Meridian's proposal unacceptable under the staffing/approach factor and assigned it 3 (of 10 available) points. GSA found that the proposal was deficient because it did not establish that the on-site supervisor had all of the experience required by the RFP, the proposed staffing--three on-site employees, comprised of a desk attendant and two technicians--was not sufficient to perform the contract, and the proposal to have the project manager off-site, three time zones away, would result in inadequate management attention. AR at 8. Regarding its staffing concerns, GSA noted that Urban-Meridian planned to supplement the three employees with part-time on-call employees, but found this approach impracticable given security clearance requirements and the potential that the use of on-call employees would adversely affect continuity of services. Evaluation Memorandum at 5.

Urban-Meridian maintains that the significant downgrading of its proposal in this area was unwarranted. First, it asserts that the on-site supervisor it proposed in fact has all the experience required by the RFP. In this regard, the RFP required all personnel working on the contract to have at least 3 years of recent experience in the operation and maintenance of equipment and systems comparable in complexity to systems covered by the contract. RFP § D.7.1. These systems included a PDSI Maximo Advantage Computerized Maintenance Management System (CMMS). RFP § C.3.8. The agency explains that, while Urban-Meridian claimed in its proposal that its on-site supervisor had experience with a different, but comparable, CMMS, it could not evaluate whether the system in fact was comparable because the proposal did not identify the system. AR at 8. An offeror runs the risk of having its proposal downgraded or rejected where, as submitted, it is inadequately written. McHargue Constr. Co., B-279715, July 16, 1998, 98-2 CPD ¶ 21 at 6. Since Urban-Meridian did not identify the allegedly comparable CMMS system, it was reasonable for GSA to downgrade the proposal for failing to establish that the proposed site manager possessed all required experience.

Second, Urban-Meridian asserts that GSA misled it into offering the three employees, including a full-time service desk attendant, that GSA now claims constituted an inadequate staff (the agency determined that four employees would be optimal staffing). In this regard, it claims that GSA indicated during a site visit that the desk service had to be “manned” on a full-time basis, and implied in a response to an offeror’s preproposal question that two mechanics were the only current on-site employees, when in fact there were three mechanics on-site in addition to the project manager. According to Urban-Meridian, based on these statements, it believed it was proposing the exact number and mix of staff that was currently in place.

This argument is without merit. At no time did the agency direct offerors how to staff their proposals. Indeed, in response to a question that specifically asked about the current staffing level, GSA stated: “As staffing is one of the evaluation factors, we will not disclose the information. It will be up to the offerors to propose their own staffing level independently.” RFP amend. 2, Question 5. The GSA statements on which Urban-Meridian claims it relied in no way contradicted this question response. The agency’s reference to full-time service desk staffing merely reflected a solicitation provision, RFP § C.4.4, and amend. 2, Question 13, which required the contractor to operate a service call desk. In response to the question regarding the service desk, the agency stated, “However offerors want to provide this service should include in their technical proposals under staffing.” *Id.* While this statement could be more clearly worded, it in no way called for “manning” the service desk on a full time basis. With respect to the two mechanics, the question asked by a potential offeror was: “The U.S. Court of Appeals has two mechanics now. Have these mechanics been told or asked if they would stay under another contractor?” In response, the agency did not direct offerors regarding staffing, but stated only that it does not supervise on-site employees. RFP amend. 2, Question 2. Urban-Meridian interpreted GSA’s response as confirming that there were only two mechanics on site. This interpretation was unreasonable. The question 2 response did not directly address staffing and, in any case, the response to question 5 made it clear that it was up to offerors to determine the appropriate staffing, and that GSA would not provide staffing information.

Finally, Urban-Meridian maintains that its proposed use of part-time, on-call employees did not warrant downgrading its proposal. In this regard, Urban-Meridian claims that, while these employees would have to obtain a security clearance, this would not interfere with performance, since the clearance process involves no more than the employee getting fingerprinted and completing a personal history statement that must be checked by the local police. Urban-Meridian further notes that its proposal indicated that part-time personnel would be hired and trained in advance so that they already would have security clearances when tasked under the contract.

GSA’s concerns regarding part-time employees were reasonable. Although Urban-Meridian attempts to minimize the impact of the security clearance process

on contract performance, it is clear that, even if it is limited to fingerprinting and personal history checks by the local police, the process will take some amount of time. We see nothing unreasonable in the agency's considering the possibility that the clearance process could result in at least minor delays in bringing in new employees and that, if the delays occurred on a regular basis--whenever a new part-time employee was brought in--the delays could disrupt performance, *i.e.*, employees might not be available when needed. Further, while Urban-Meridian asserts that it intends to hire and clear the on-call employees in advance, its proposal states only that "Urban-Meridian routinely recruits a team of part-time maintenance engineers, electricians, plumbers and building tradesmen in the local area for assignment to the Project as required in response to work surges and reimbursable work requirements." Urban-Meridian Proposal § 2.1.2. Nothing in this statement indicates that Urban-Meridian intends to hire and clear part-time employees in advance.

AWARD DECISION

Urban-Meridian asserts that the scoring difference between its and BWCS's proposals solely reflects BWCS's incumbency and cannot justify award at a [DELETED] higher price. The record does not support Urban-Meridian's assertion. While GSA considered BWCS's experience and performance as the incumbent contractor, GSA also specifically found that BWCS, unlike Urban-Meridian, has substantial experience in operating all relevant electronic systems, substantial experience with facilities management generally and courthouses specifically, and a sufficient on-site staff that exceeds the requirements of the solicitation. Award Decision at 2,4,5. These considerations all fell within the stated evaluation factors, and therefore were appropriate discriminators between the proposals. We note that the fact that some of these advantages derive from BWCS's performance as the incumbent did not preclude the agency from considering them; agencies are not required to neutralize such advantages of incumbency. Infrared Tech. Corp., B-282912, Sept. 2, 1999, 99-2 CPD ¶ 41 at 5. Since, further, the non-price factors were more important than price, there is no basis to question the agency's conclusion that BWCS's substantially superior proposal represented the best value to the government.

The protest is denied.

Anthony H. Gamboa
General Counsel